

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Matthew Alexander Nielson; J.Z., a Minor
under age 18 by his Parent and Guardian
Michele Stephens; D.M., a Minor under age 18
by her Parent and Guardian Victoria Reed; and
the Freedom From Religion Foundation, Inc.,

Plaintiffs,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

C.A. No. 3:12-cv-01427-CMC

STIPULATION

By Order dated February 5, 2014, the Court has directed the parties to file a stipulation addressing five (5) issues related to the above-referenced case. The parties hereby stipulate as follows:

(1) Which, if any, Causes of Action are resolved by agreement

Causes of Action 1-3 set forth in Plaintiff's Second Amended Complaint related to graduation prayer were resolved by the parties by prior agreement.

(2) Whether the parties stipulate to dismissal of those causes of action and, if so, whether the Dismissal Should be with or without prejudice

Causes of Action 1-3 set forth in Plaintiff's Second Amended Complaint related to graduation prayer should be dismissed with prejudice.

(3) Whether any issues related to those causes of action are reserved for post-dismissal resolution

No post-dismissal actions are reserved for the aforementioned Causes of Action 1-3

(4) Whether the cross-motions for summary judgment are intended to resolve all remaining cause of actions and demands for relief (with the exception of any post-judgment motion for attorneys' fees which may be warranted)

Unless the United States Supreme Court issues an opinion in *Town of Greece v. Galloway*, No. 12-696, that modifies current jurisprudence regarding invocations at meetings of legislative bodies, cross motions for summary judgment are intended to resolve all remaining causes of

action and demands for relief, with the exception of attorneys' fees. The issue for consideration by the Court regarding Causes of Actions 4, 5, and 6 is whether the District Board of Trustees is a deliberative or legislative public body entitled to the exemptions to government sponsored or endorsed prayer articulated by the Supreme Court in *Marsh v. Chambers*, 463 U.S. 783 (1983) and as defined in S.C. Code § 6-160. If the Court determines that the *Marsh* holding is applicable to the District's Board of Trustees, Plaintiffs stipulate that they do not further challenge the constitutionality or validity of the District's present policy, thus resolving any remaining causes of action and demands for relief with prejudice. If the Court determines that the *Marsh* holding is not applicable to the District's Board of Trustees and a decision by the Supreme Court in *Town of Greece* does not modify existing jurisprudence related to invocations by a legislative bodies, the parties stipulate that the Court may resolve the remaining causes of action with prejudice through application and analysis of existing constitutional tests related to school prayer.

(5) Court action if Plaintiffs prevail

In the event that Plaintiffs prevail, the parties have agreed and understand that the Court may issue a declaratory judgment as to the District's current policy, award nominal damages in the stipulated amount of \$1.00, and issue the appropriate injunctions.

(SIGNATURE BLOCKS ON FOLLOWING PAGE)

We So Stipulate:

By: s/ Meredith L. Seibert
Andrea E. White (Fed. I.D. No. 5620)
Meredith L. Seibert (Fed. I.D. No. 9919)

DUFF, WHITE & TURNER, LLC
3700 Forest Dr., Suite 404
P.O. Box 1486
Columbia, SC 29202
Telephone: 803.790.0603
Fax: 803.790.0605
awhite@dwtlawfirm.com
mseibert@dwtlawfirm.com

David L. Morrison (Fed. I.D. No. 3581)
Kassi B. Sandifer (Fed. I.D. No. 7439)

MORRISON LAW FIRM, LLC
7453 Irmo Drive, Suite B
Columbia, SC 29212
Telephone: 803.661.6285
Fax: 803.661.6289
david@dmorrison-law.com
kassi@dmorrison-law.com

Attorneys for Defendant School District Five
of Lexington and Richland Counties

We consent:

By: s/ Aaron J. Kozloski
Aaron J. Kozloski (Fed. I.D. No. 9510)

CAPITOL COUNSEL, LLC
P.O. Box 1996
Lexington, SC 29071
Telephone: 803.748.1320
Fax: 888.513.6021
aaron@capitolcounsel.us

Attorney for Plaintiffs

February 19, 2014
Columbia, South Carolina